



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2010

Mr. Howard S. Slobodin
Staff Attorney and Public Information Coordinator
Trinity River Authority of Texas
P.O. Box 60
Arlington, Texas 76004

OR2010-13943

Dear Mr. Slobodin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393579.

The Trinity River Authority of Texas (the "authority") received two requests for all attorney's fees paid by the authority in connection with a specified case. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rules 190.3 and 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information.

We begin by addressing your assertion that the present requests are not requests for information under the Act, but rather attempts to circumvent the discovery process. You state that the submitted information pertains to a lawsuit against the authority and that discovery for this suit was conducted under a Level 2 Discovery Control Plan. You further assert that the discovery period in the suit ended on November 2, 2006. You argue that because legal authority already exists which governs the production of documents in the lawsuit, the requests at issue are not subject to the Act. Section 552.0055 of the Government Code provides that "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or

discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) ("In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.").

You do not assert that either of the requests the authority received is in fact a "subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure." Nothing in the requests reflect that they meet the elements of a subpoena duces tecum. *See* Code Crim. Proc. arts. 24.02 (defining subpoena duces tecum), .03 (describing procedures for obtaining subpoenas, including subpoena duces tecum). Furthermore, you have not demonstrated, and the requests do not indicate, that the information was otherwise requested pursuant to the authority of a statute or a rule of civil or criminal procedure. The requestors state that they are requesting the information under the "Texas Public Information Act." Although discovery in a contested case is conducted under the Texas Rules of Civil Procedure, there is nothing that prevents the requestors from also submitting a request for information under the Act. Therefore, we find the authority received requests for information under the Act, and we will address whether the authority is required to release the submitted information pursuant to the Act.

Next, we must address the authority's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The authority states it received the requests for information on June 23, 2010, and June 24, 2010, respectively. Therefore, the authority's fifteen-business-day deadlines were July 14, 2010, and July 15, 2010, respectively. However, you did not submit a copy of the first request for information submitted until July 19, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the authority failed to comply with the requirements of section 552.301 with respect to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be

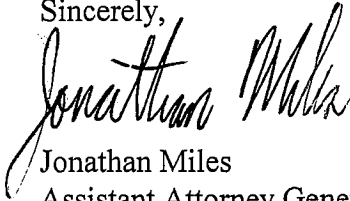
released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise section 552.103 of the Government Code, rule 503 of the Texas Rules of Evidence, and rule 192.5 of the Texas Rules of Civil Procedure as exceptions to disclosure of the information at issue, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions Nos. 676 at 12 (claim of attorney-client privilege under rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 630 at 4 (governmental body may waive attorney-client privilege, section 552.107(1)), 677 at 10 (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). We note that in waiving section 552.103, rule 503, and rule 192.5 for the first request, the authority also waived section 552.103, rule 503, and rule 192.5 for the second request. Accordingly, the authority may not withhold the submitted information pursuant to section 552.103 of the Government Code or rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. Further, although you assert the submitted information is excepted from disclosure pursuant to rule 190.3 of the Texas Rules of Civil Procedure, we note rule 190.3 merely provides for a discovery deadline and limitations on the use of oral depositions and interrogatories in certain civil cases and does not make information confidential for purposes of the Act. *See* Tex. R. Civ. P. 190.3; *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, the authority may not withhold any of the submitted information on the basis of rule 190.3. As you raise no further exceptions to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 393579

Enc. Submitted documents

c: Requestor
(w/o enclosures)